

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review)	
)	
Sacred Heart School)	File No. SLD-346248
Mount Holly, New Jersey)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: April 21, 2005

Released: April 22, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Sacred Heart School, Mount Holly, New Jersey (Sacred Heart).¹ Sacred Heart seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) denying Sacred Heart's Funding Year 2003 application for discounted services under the schools and libraries universal service support mechanism on the ground that Sacred Heart violated the Commission's competitive bidding requirements.² For the reasons set forth below, we deny Sacred Heart's Request for Review and affirm SLD's denial of Sacred Heart's application.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules provide that, with limited exceptions for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting services.⁵ The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for

¹ Letter from Ronald J. Maniglia, Sacred Heart School, to Federal Communications Commission, filed February 5, 2004 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. 54.719(c).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ronald J. Maniglia, Sacred Heart School, dated December 11, 2003 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504, 54.511(c).

⁵ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

the services ordered by the applicant.⁶ Once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant may enter into a long term contract at that time and, having complied with the competitive bidding requirements prior to entering into the service contract, need not submit any additional FCC Form 470s for the duration of that contract.⁷

3. As noted above, the Commission's rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirements under certain circumstances. Specifically, under section 54.511(c)(1), contracts signed on or prior to July 10, 1997 are exempt from competitive bidding requirements for the duration of the contract.⁸ Contracts signed after July 10, 1997 and before January 30, 1998 are exempt from competitive bidding requirements for services provided through the end of Funding Year 1998, regardless of the duration of the contract as a whole.⁹

4. In the instant case, Sacred Heart entered into a five-year agreement with Voicenet for the provision of Internet access on July 1, 2000.¹⁰ Two years later, Sacred Heart entered into a new contract with Voicenet to reflect a change in the transmission rate of the underlying services.¹¹ In Funding Year 2003, Sacred Heart submitted its FCC Form 471 application for the services at issue and referenced FCC Form 470 # 786180000179261 as the supporting Form 470.¹² Because Sacred Heart checked Item 10 in Block 3 of the Form, indicating that it sought support only for services provided pursuant to an existing, binding contract signed on or before July 10, 1997, SLD did not post this Form 470 to SLD's website.¹³

5. On December 11, 2003, the Administrator denied Sacred Heart's funding request on the ground that Sacred Heart's Form 470 was not posted on SLD's website for 28 days prior to Sacred Heart

⁶ 47 C.F.R. § 54.504(c); *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732 (1999) ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.")

⁸ 47 C.F.R. § 54.511(c)(1).

⁹ 47 C.F.R. §§ 54.511(c)(1), 54.511(d). *See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 2372 (1997); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915 (1998); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999).

¹⁰ Request for Review at Attachment 1.

¹¹ Request for Review at Attachment 1.

¹² *See* FCC Form 471, Sacred Heart School, filed January 3, 2002; FCC Form 470, Sacred Heart School, filed February 5, 1999 (Sacred Heart Form 470 #786180000179261).

¹³ Item 10, Block 3 of the Form 470 provides that a contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract does not require a filing of a Form 470. *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999).

signing a contract for services.¹⁴ In response, Sacred Heart argues that the July 2002 contract was not actually a “new contract,” but was rather an “overlap” with the previous contract, and therefore, a new Form 470 did not need to be posted for the services at issue.¹⁵

6. Upon review of the record, we conclude that SLD correctly denied Sacred Heart’s request for support. We find that the July 2002 contract is a new contract for services because it replaces the contract executed in July 2000.¹⁶ In fact, the July 2002 contract clearly states that the original contract would be “cancelled upon execution of the new contract.”¹⁷ As such, we conclude that Sacred Heart was required to file, for posting to SLD’s website, a Form 470 presenting the services described in the July 2002 contract for competitive bidding.

7. In addition, a contract awarded in July 2000 does not qualify as a pre-existing contract under the Commission’s rules, because exceptions to the competitive bidding regulations only apply to contracts entered into prior to January 30, 1998.¹⁸ We note that by checking Item 10 in Block 3 of the Form 470, Sacred Heart erroneously indicated that the requested services were not subject to competitive bidding because Sacred Heart had an existing, binding contract that was entered into on or before July 10, 1997.¹⁹ SLD therefore did not post those services on its website for competitive bidding. Because the services described in the July 2002 contract were never posted for bidding, Sacred Heart’s Funding Year 2003 application did not satisfy the Commission’s competitive bidding requirements. Accordingly, we deny Sacred Heart’s Request for Review.

8. With regard to assertions that the applicants were misinformed by SLD, we have consistently held that where a party receives erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.²⁰ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the ultimate responsibility of complying with all relevant rules and procedures.²¹

¹⁴ Administrator’s Decision on Appeal.

¹⁵ Request for Review at Attachment 1.

¹⁶ See Administrator’s Decision on Appeal; Request for Review at Attachment 1.

¹⁷ Request for Review at Attachment 1.

¹⁸ See *supra*, para. 3 (noting that a pre-existing contract is limited to those contracts signed between July 10, 1997 and January 30, 1998).

¹⁹ Sacred Heart FCC Form 470 # 786180000179261, Item 10. See also *supra* n.13.

²⁰ See *Request for Waiver by Lombard School District 44, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-109411, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13166 (Com. Car. Bur. 1999).

²¹ See *Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000).

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Sacred Heart School, Mount Holly, New Jersey, on February 5, 2004, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau